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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153435

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 23, 2013, at Waukesha, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Cindy Zander, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.

2. An appeal was submitted by or on behalf of Petitioner to the Division of Hearings and Appeals (DHA) on November 12, 2013. The appeal challenged actions taken by the Department of Health Services on two prior authorization (PA) requests for private duty nursing (PDN).
3. The instant decision involves PA # [REDACTED]. The second, PA # [REDACTED]; that is the subject of a separate decision (DHA # 153437).
4. PA # [REDACTED] was filed on or about June 20, 2013 and sought 70 hours per week of private duty nursing services for Petitioner for 52 weeks commencing July 27, 2013. The total cost was noted to be \$145,600.00. That request was approved in part – the time period was reduced to July 27, 2013 through November 14, 2013 to permit time to transition Petitioner to alternate levels of care. A notice dated August 15, 2013 was sent to Petitioner at the above address that informed her of the approval with the modification and the reason for the modification. An appeal deadline of September 29, 2013 was noted and the DHA address was provided.
5. This appeal was filed on November 12, 2013.

### **DISCUSSION**

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. Because this appeal was filed after the appeal deadline, the Division of Hearings and Appeals has no jurisdiction to consider it and therefore must deny it.

Again, the second PA, # [REDACTED], is the subject of a second decision – in case # 153437.

***Finally, I note for Petitioner that the provider will not receive a copy of this Decision. If Petitioner wishes the provider to have a copy, Petitioner must provide a copy to the provider.***

### **CONCLUSIONS OF LAW**

There is no jurisdiction to consider the Petitioner's appeal because it is untimely.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

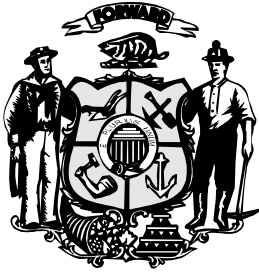
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of February, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 28, 2014.

Division of Health Care Access and Accountability